BRIEF IN SUPPORT OF PETITION

The attention of the Court is respectfully directed to the petition containing a statement of the case (Petition, *ante*, pp. 2 and 3), the opinion of the Circuit Court (Petition, *ante*, p. 2) and the specification of errors now urged (Petition, *ante*, p. 4).

Statutes Involved

Title 18, U. S. C. A., Section 80, under which the defendant was indicted and penalized, provides as follows:

> "§ 80. (Criminal Code, Section 35(A).) Presenting false claims.
>
> "Whoever shall make or cause to be made or present or cause to be presented, for payment or approval, to or by any person or officer in the civil, military, or naval service of the United States, or any department thereof, or any corporation in which the United States of America is a stockholder, any claim upon or against the Government of the United States, or any department or officer thereof or any corporation in which the United States of America is a stockholder, knowing such claim to be false, fictitious, or fraudulent; or whoever shall knowingly and willfully falsify or conceal or cover up by any trick, scheme, or device a material fact, or make or cause to be made any false or fraudulent statements or representations, or make or use or cause to be made or used any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry in any matter within the jurisdiction of any department or agency of the United States or of any corporation in which the United States of America is a stockholder, shall be fined not more than $10,000 or imprisoned not more than ten years, or both."

Title 50, U. S. C. A., Section 23, applicable to enemy aliens, provides as follows:

> "§ 23. Jurisdiction of United States Courts and judges.
>
> "After any such proclamation has been made, the several courts of the United States, having criminal jurisdiction, and the several justices and judges of the courts of the United States, are authorized and it shall be their duty, upon complaint against any alien enemy resident and at large within such jurisdiction or district, to the danger of the public peace or safety, and contrary to the tenor or intent of such proclamation, or other regulations which the President may have established, to cause such alien to be duly apprehended and conveyed before such court, judge, or justice; and after a full examination and hearing on such complaint, and sufficient cause appearing, to order such alien to be removed out of the territory of the United States, or to give sureties for his good behavior, or to be otherwise restrained, conformably to the proclamation or regulations established as aforesaid, and to imprison, or otherwise secure such alien, until the order which may be so made shall be performed."

ARGUMENT

I

A violation of the rules and regulations governing the conduct of enemy aliens should be prosecuted and punished under the provisions of Title 50, Section 23.

Under the Act of June 28, 1940, Section 41, all aliens are required to register and be fingerprinted (Title 8, U. S. C. A., Sections 451-460). Penalties for failure to register are prescribed by Section 457, and subdivision (c) provides that any alien filing an application for registra-

tion containing false statements is subject, upon conviction, to a fine in the sum of $1,000.00, imprisonment for not more than six months and possible deportation. Presidential Proclamation No. 2537, issued January 14th, 1942 (3 CFR, Cum. Supp.), under Title 50, U. S. C. A., Section 21, authorized the Attorney General of the United States to establish rules and regulations for the conduct of all enemy aliens.

Section 23 of Title 50, U. S. C. A., vests the criminal courts of the United States with jurisdiction over complaints against alien enemies considered dangerous to public safety and authorizes the apprehension, detention and imprisonment of those violating the rules and regulations established by Presidential Proclamation. No specific reference is made in that section with respect to the presentation of a false or fraudulent claim or statement by a registrant under the Act, but the regulations promulgated by the Attorney General of the United States on January 22, 1942 (28 C. F. R., Cum. Supp., 30.63) provide that, "Any alien of enemy nationality herein who fails to comply with the regulations in this part or any other regulations governing the conduct of aliens of enemy nationalities, is subject to apprehension, detention and internment for the duration of the war."

It seems clear from the foregoing enactments and the proclamations, rules and regulations promulgated under the authority thereof, that the specific provisions for the punishment of violators of the Registration Acts was exclusively intended to embrace all violations committed thereunder. In view of that legislative basis petitioner respectfully suggests that the prosecution of the petitioner under the general provisions of Title 18, U. S. C. A., Section 80, was unauthorized, improper and contrary to the Congressional scheme for the punishment of violations of the Enemy Alien Registration Acts. A mere reading of these sections discloses the contrariety of the punishment provided by each.

The question of which statute should apply to the petitioner's case is not, therefore, merely an academic question, but presents a real issue of importance and merit.

II

Petitioner's statement on the application for a certificate of identification does not constitute a crime within the meaning of Title 18, U. S. C. A., Section 80.

Section 80, Title 18, U. S. C. A., condemns the presentation of a false or fraudulent statement, affidavit or deposition in any matter within the jurisdiction of any department or agency of the United States. Proof of a violation of that statute can only be established by evidence of a false, deceitful or fraudulent statement made with knowledge of its falsity and with intent to deceive. The record in this case will show that the petitioner has not presented any false or fraudulent claims with knowledge of its falsity, and the violation, if any, is attributable to the peculiar and vague nature of the question to which his response was given.

The question which requires of all enemy aliens to, "Name the clubs, organizations and societies of which you have been a member or with which you have been affiliated at any time during the past 5 years," is vague, ambiguous and, reasonably interpreted, offers no conclusive suggestion that applicants furnish information concerning membership or affiliation with any political organizations. The failure on the part of petitioner to make a disclosure about his remote and abandoned effort to join the Nazi Party does not justify the conclusion that this constituted an effort on his part to evade legal requirements. His action in that connection was indiscreet perhaps, but furnishes no basis for criminal prosecution, especially when it is considered that the petitioner is an alien not readily familiar with the English language.

Petitioner was not a member of the Nazi Party or an affiliate, but his status was that of an applicant or probationary member. He never took an oath or was officially inducted as a member, and the lack of any knowledge that he was a member in good standing, was sufficient justification for the belief that the question did not apply to him. There is no basis to support the charge that his inadvertence or bad judgment constitutes a crime within the meaning of Title 18, U. S. C. A., Section 80.

CONCLUSION

It is respectfully submitted that the decision below was in error and should be reviewed by this Court. Accordingly, the writ prayed for should issue.

Respectfully submitted,

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